

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application.

Claims 1-3, 5-7 and 10 are now present in this application. Claims 1 and 7 are independent. By this Amendment, Fig. 4 is amended, amendments have been made to claims 1, 3 and 7, and claims 4, 8, 9 and 11-20 have been canceled. No new matter is involved. Support for the claimed amendments is found throughout Applicant's originally filed disclosure, including the originally filed claims, drawings and main body of the specification.

Reconsideration of this application, as amended, is respectfully requested.

Drawing Amendment

Fig. 4 has been amended to correct a mis-spelled word. The word "mitor" in step S13 has been changed to read - - motor - -.

Priority Under 35 U.S.C. § 119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

Restriction Requirement

The Examiner has made the Restriction Requirement final, and has withdrawn claims 11-20 from further consideration. By this Amendment, Applicants have canceled non-elected claims 11-20. Applicants reserve the right to file a divisional application directed to claims 11-20 at a later date

if so desired.

Rejection Under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph

Claims 4, 8 and 9 stand rejected under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph. This rejection is respectfully traversed.

The Examiner has set forth certain instances wherein the claim language is not clearly understood.

In order to overcome this rejection, Applicant has amended the subject matter of claims 4, 8 and 9 to correct each of the deficiencies specifically pointed out by the Examiner, added the amended version of claim 4 to claim 1, added the amended versions of claims 8 and 9 to claim 7, and canceled claims 4, 8 and 9. The changes to claim 4 (added to claim 1) are supported, for example, in paragraphs [0021] - [0023] and in paragraphs [0036] - [0040]. Applicant respectfully submits that amendments particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Rejection Under 35 U.S.C. § 102

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,247,339 to Kenjo et al. ("Kenjo"). This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

A prior art reference anticipates the subject matter of a claim when that reference discloses

every feature of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art device that a particular element operates as theorized by the Examiner, inherency may not be established by probabilities or possibilities. What is inherent must necessarily be disclosed. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present. Rosco v. Mirro Lite, 304 F.3d 1373, 1380, 64 USPQ2d 1676 (Fed. Cir. 2002). The dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior reference's teaching that every claim feature or limitation was disclosed in that single reference, Dayco Products, Inc. v. Total Containment, Inc., 329 F.3d 1358, 1368, 66 USPQ2d 1801 (Fed. Cir. 2003).

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984).

If the PTO fails to meet this burden, then the applicant is entitled to the patent. However, when a *prima facie* case is made, the burden shifts to the applicant to come forward with evidence and/or argument supporting patentability. Patentability *vel non* is then determined on the entirety of the record, by a preponderance of evidence and weight of argument.

Additionally, findings of fact and conclusions of law by the USPTO must be made in accordance with the Administrative Procedure Act, 5 U.S.C. §706(A), (E) (1994). *Zurko v. Dickinson*, 527 U.S. 150, 158, 119 S.Ct. 1816, 1821, 50 USPQ2d 1930, 1934 (1999).

Initially, Applicant notes that claim 4 has been canceled and the subject matter of claim 4 has been added to claim 1.

The Office Action states that Kenjo discloses all of the claimed structure and that Kenjo is capable of determining a drying cycle time, which is merely an intended use of the apparatus.

Applicant respectfully disagrees with these assertions for a number of reasons.

Firstly, claim 1, as amended, positively recites a device for controlling drying of laundry in a drum type washing machine having means for drying the laundry comprising: (1) a motor for rotating a drum; (2) a motor sensing part for detecting rotation speed of the motor; and (3) a controlling part for (a) controlling the motor sensing part to detect the rotation speed of the motor during a spinning time period, and (b) setting a drying cycle time period to operate the means for drying the laundry according to the detected rotation speed. It also includes the subject matter of canceled claim 4, i.e., it also recites wherein the controlling part detects if one of the preset rotation speed is the same as a maximum value of the detected rotation speed, and determines a drying time period relevant to the preset rotation speed which is the same as the maximum value of the detected rotation speed, as the drying cycle time period.

This claim is recited in means-plus-function format and patentable weight has to be given to the clearly recited functions of the various parts or means for performing these positively recited functions. All words in a claim must be considered in judging the patentability of that

claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Kenjo clearly does not disclose the positively recited combination of features in claim 1. In fact, Kenjo has no disclosure of a washer with drying features, let alone of a controlling part that sets a drying cycle time period to operate means for drying the laundry according to detected rotation speed.

Moreover, the claims positively recite features in the form of a “wherein” clause. Applicant refers the Examiner to Akamai Technologies Inc., v. Cable & Wireless Internet Services Inc., 68 USPQ2d 1186 (Fed. Cir. 2003), where patentable weight was given to the “wherein” clause without question. Similarly, in Griffin v. Bertina, 62 USPQ2d 1431 (Fed. Cir. 2002), the court held that the wherein clause limits the subject matter in issue. Applicant respectfully submits that each wherein clause in claims 1-3, 5 and 6 positively recites features that are used to patentably define the invention. Applicant respectfully submits that the wherein clause has to be given patentable weight and that Kenjo does not disclose the positively recited features in the wherein clauses of claims 1-3, 5 and 6.

Applicant respectfully submits that the assertion in the outstanding Office Action that the wherein clause language is merely an intended use that does not have to be given patentable weight is incorrect in view of the case law cited above.

Accordingly, the Office Action fails to make out a *prima facie* case of anticipation of the claimed invention by Kenjo.

Reconsideration and withdrawal of this rejection of claims 1-6 are respectfully requested.

Rejections under 35 U.S.C. §103

Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenjo in view of U.S. Patent 4,741,182 to Didier and further in view of U.S. Patent 6,006,445 to Large. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole, "not just a few features of the claimed invention. Under 35 U.S.C. §103, " [a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See In re O'Farrell, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the invention must be considered as a whole and the claims must be considered in their entirety. See Medtronic, Inc. v. Cardiac Pacemakers, Inc., 721 F.2d 1563, 1567, 220 USPQ 97, 101 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. §103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See, In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467

(1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note, In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are

not "evidence." See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, it is well settled that the Office must provide objective evidence of the basis used in a prior art rejection. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Furthermore, during patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent. Only when a *prima facie* case is made, the burden shifts to the applicant to come forward to rebut such a case.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole, "not just a few features of the claimed invention. Under 35 U.S.C. §103, " [a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See In re O'Farrell, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the invention must be considered as a whole and the claims must be considered in their entirety. See Medtronic, Inc. v. Cardiac Pacemakers, Inc., 721 F.2d 1563, 1567, 220 USPQ 97, 101 (Fed. Cir. 1983).



In rejecting claims under 35 U.S.C. §103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See, In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note, In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, it is well settled that the Office must provide objective evidence of the basis used in a prior art rejection. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Furthermore, during patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re, Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent. Only when a *prima facie* case is made, the burden shifts to the applicant to come forward to rebut such a case.

The Office Action clearly admits that Kenjo does not a washing machine that includes drying facilities. In an attempt to remedy this deficiency, the Office Action turns to Didier and Large. Didier discloses a process for determining a load of clothes in a laundry machine which has a drum and that involves determining the moment of inertia of a mass of clothes in the drum based on data related to the motor torque or drive torque of the drum, the acceleration of the drum, the friction torque and the moment of inertia of the drum. Large discloses a washer/dryer combination.

Initially, Applicant notes that claims 8 and 9 have been canceled and their subject matter has been added to claim 7.

The Office Action states that it would be obvious to use the device disclosed by Kenjo, i.e., a washing machine with a motor, a speed sensor, and a controller to calculate load and manipulate wash parameters in a washer/dryer combo like that of Large in order to set the drying time based on laundry load, as disclosed by Didier.

Applicant disagrees with this conclusion for a number of reasons.

Firstly, none of the three applied references used in this rejection set a drying cycle time period to operate the means for drying the laundry according to the detected amount of the laundry and the detected motor rotation speed, as claimed. Kenjo, the base reference used in this rejection has nothing whatsoever to do with drying laundry and only controls motor speed to enhance cleaning, not drying. Didier, the secondary reference used in this rejection, is directed to determining a laundry load regardless of whether the load is on a washer, a dryer or in a washer/dryer, and does not provide any details of how the load information is used to affect operation of a washer, dryer or washer/dryer. Large, the tertiary reference, is directed to disclosing a washer/dryer combination, *per se*, and contains no details of controlling the operation of the washer/dryer combination.

Because these three references are completely devoid of any teaching of this positively recited claimed feature of setting a drying cycle time period to operate the means for drying the laundry according to the detected amount of the laundry and the detected motor rotation speed, the only basis for this rejection can be improper hindsight reconstruction of Applicant's

invention based solely on Applicant's disclosure, or unwarranted speculation based not on objective factual evidence of record.

Also, the applied references fails to disclose, suggest or otherwise render obvious, the positively recited feature wherein once the maximum value of the detected rotation speed is equal to or higher than the preset rotation speed, the controlling part determines a drying time period relevant to the corresponding preset rotation speed as the drying cycle time period.

Additionally, Applicant respectfully submits that the assertion in the outstanding Office Action that the wherein clause language is merely an intended use that does not have to be given patentable weight is incorrect in view of the case law cited above.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the invention recited in claims 7-10.

Reconsideration and withdrawal of this rejection of claims 7-10 are respectfully requested.

### Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn, and reconsider and withdraw the restriction requirement. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Application No.: 10/720,056  
Art Unit 1746

Docket No.: 0465-1094P  
Reply to Office Action dated January 18, 2007

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46, 472, at (703) 205-8000, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

Applicant respectfully petitions under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a two-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **\$450.00** is attached hereto.

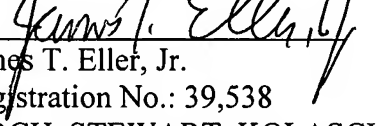
Application No.: 10/720,056  
Art Unit 1746

Docket No.: 0465-1094P  
Reply to Office Action dated January 18, 2007

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

**Dated: May 25, 2007**

Respectfully submitted,

By   
James T. Eller, Jr.  
Registration No.: 39,538  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant

Attachment: Replacement Drawing (1 Sheet – Fig. 4)

*Amendments to the Drawings*

The attached sheet of drawings includes changes to Fig. 4. This sheet, which includes Fig. 4, replaces the original sheet including that same Figure.

The word “mitor” has been replaced by the correctly spelled word - - motor- - in step S13 of Fig. 4.

Attachment: Replacement Sheet